

STATE OF NORTH CAROLINA

WAKE COUNTY

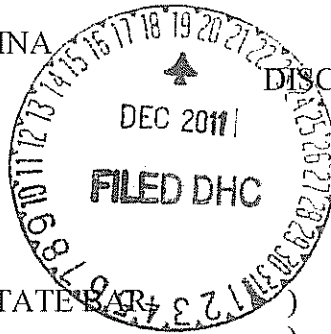
THE NORTH CAROLINA STATE BAR

Plaintiff,

vs.

DAVID A. VESEL, Attorney,

Defendant.



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
11 DHC 31

ANSWER

**ANSWER TO SPECIFIC  
ALLEGATIONS IN THE COMPLAINT**

1. The allegations of paragraph "1" of the Complaint are admitted.
2. The allegations of paragraph "2" of the Complaint are admitted.
3. Admits that during the relevant period referred to herein, the Defendant was actively engaged in the practice of law and maintained a law office in Creedmoor, Granville County, North Carolina. Except as specifically admitted, the remaining allegations of paragraph "3" of the Complaint are denied.
4. No response to the allegations of paragraph "4" of the Complaint are required.
5. Admits that on or about April 15, 2005, the Defendant employed Cynthia Driscoll as an independent contract real estate manager / bookkeeper / paralegal for his law practice. Among Ms. Driscoll's duties were managing all aspects the real estate division of the law firm, including managing and scheduling closings, SoftPro operations, disbursements, and

real estate bookkeeping, including ledger creation and maintenance, accountings and reconciliations. In addition, Ms. Driscoll conducted title searches, prepared title commitments and real estate closing documents and conducted real estate closings as needed. Except as specifically admitted, the remaining allegations of paragraph "5" of the Complaint are denied.

6. Admits that at the time Cynthia Driscoll was employed, the Defendant's practice consisted of family law, medical negligence, intellectual property, ERISA and general and appellate litigation. Subsequent to associating with Cynthia Driscoll, the Defendant's practice was expanded to include real estate law. Except as specifically admitted, the remaining allegations of paragraph "6" of the Complaint are denied.

7. Admits that while she was associated with the Defendant's law firm, Cynthia Driscoll was responsible for managing all aspects of the real estate division of the law firm, under Defendant's supervision, including managing and scheduling closings, SoftPro operations, disbursements, and real estate bookkeeping, including ledger creation and maintenance, accountings and reconciliations. In addition, Ms. Driscoll conducted title searches, prepared title commitments and real estate closing documents and conducted real estate closings as needed, under Defendant's supervision. Except as specifically admitted, the remaining allegations of paragraph "7" of the Complaint are denied.

8. Admits that while she was associated with the Defendant's law firm, Cynthia Driscoll was responsible for managing all aspects of the real estate division of the law firm, under Defendant's supervision, including managing and scheduling closings, SoftPro operations, disbursements, and real estate bookkeeping, including ledger creation and maintenance, accountings and reconciliations. In addition, Ms. Driscoll conducted title searches, prepared title commitments and real estate closing documents and conducted real estate closings

as needed, under Defendant's supervision. Except as specifically admitted, the remaining allegations of paragraph "8" of the Complaint are denied.

9. The allegations of paragraph "9" of the Complaint are admitted.

10. The allegations of paragraph "10" of the Complaint are denied inasmuch as subsequent to the association of Cynthia Driscoll with the Defendant's law firm, and during the relevant period herein, regular reconciliations were prepared by Ms. Driscoll and presented to the Defendant for review. However, contemporaneously with the termination of Ms. Driscoll by the Defendant, it was discovered that, along with other documents maintained by the firm, Ms. Driscoll erased all financial and accounting ledgers and spreadsheets from the law firm's computers and additionally destroyed and/or removed the paper copies of same from the premises without the prior knowledge or consent of the Defendant. As a result, the reconciliations responsive to this paragraph needed to be recreated from scratch in order to ascertain the extent of the funds embezzled by Ms. Driscoll as well as ascertaining what, if any, funds remained to be disbursed on behalf of the firm's clientele.

11. The allegations of paragraph "11" of the Complaint are denied inasmuch as subsequent to the association of Cynthia Driscoll with the Defendant's law firm, and during the relevant period herein, regular reconciliations were prepared by Ms. Driscoll and presented to the Defendant for review. However, contemporaneously with the termination of Ms. Driscoll by the Defendant, it was discovered that, along with other documents maintained by the firm, Ms. Driscoll erased all financial and accounting ledgers and spreadsheets from the law firm's computers and additionally destroyed and/or removed the paper copies of same from the premises without the prior knowledge or consent of the Defendant. As a result, the reconciliations responsive to this paragraph needed to be recreated from scratch in order to

ascertain the extent of the funds embezzled by Ms. Driscoll as well as ascertaining what, if any, funds remained to be disbursed on behalf of the firm's clientele.

12. The allegations of paragraph "12" of the Complaint are denied inasmuch as subsequent to the association of Cynthia Driscoll with the Defendant's law firm, and during the relevant period herein, regular reconciliations were prepared by Ms. Driscoll and presented to the Defendant for review. However, contemporaneously with the termination of Ms., Driscoll by the Defendant, it was discovered that, along with other documents maintained by the firm, Ms. Driscoll erased all financial and accounting ledgers and spreadsheets from the law firm's computers and additionally destroyed and/or removed the paper copies of same from the premises without the prior knowledge or consent of the Defendant. As a result, the reconciliations responsive to this paragraph needed to be recreated from scratch in order to ascertain the extent of the funds embezzled by Ms. Driscoll as well as ascertaining what, if any, funds remained to be disbursed on behalf of the firm's clientele.

13. The allegations of paragraph "13" of the Complaint are admitted.

14. Although the Defendant now recognizes that the method of computing Ms. Driscoll's compensation could be construed as fee splitting, it was not the Defendant's intention to split his legal fees in a manner contrary to the provisions of Rule 5.4(a) of the Rules of Professional Conduct. Except as specifically admitted, the remaining allegations of paragraph "14" of the Complaint are denied.

15. The allegations of paragraph "15" of the Complaint are denied.

16. The allegations of paragraph "16" of the Complaint are denied.

17. The allegations of paragraph "17" of the Complaint are denied.

18. The allegations of paragraph "18" of the Complaint are denied.

19. The allegations of paragraph "19" of the Complaint are denied.

20. Although it is admitted that Cynthia Driscoll was able to embezzle significant funds from the trust account(s) maintained by the Defendant's law firm, it is denied that the Defendant failed to supervise Ms. Driscoll given the methodology she employed in misappropriating such funds and the number of individual closing files affected. Specifically, following the reconstruction of the financial records relating to the firm's real estate closings, it became apparent that Ms. Driscoll, during the course of her association with the Defendant, created false and misleading ledgers and reconciliations to obscure her activities. It is additionally admitted that upon subsequent investigation, it appears that Ms. Driscoll did in fact make myriad withdrawals from Wachovia Account No. 2 that failed to identify the client on whose account these withdrawals were purportedly made. As a result of the Defendant's actions subsequent to discovering Ms. Driscoll's fraud, the Defendant was able to safeguard the interests of the affected clients and is maintaining, in Wachovia Trust Account No. 2, sufficient funds to resolve any remaining disbursement issues as delineated in his letter dated April 12, 2010 and which was forwarded to the North Carolina State Bar for authorization to so disburse those funds.

21. The allegations of paragraph "21" of the Complaint are admitted.

22. The allegations of paragraph "22" of the Complaint are admitted.

23. The allegations of paragraph "23" of the Complaint are admitted.

24. Although it is admitted that the delineated title insurance premiums were not timely disbursed, the documentation provided by Ms. Driscoll contemporaneously with each such closing led the Defendant to believe that the issuance and disbursement of those funds was done in a timely manner.

Immediately subsequent to the termination of Ms. Driscoll's services, it was discovered by the Defendant that a significant number of final title opinions and/or corresponding title insurance premium checks had been hidden by Ms. Driscoll. These documents were not forwarded to First American Title Insurance Company and/or Colonial Title Company, and reflected collective premiums in excess of the sum of \$54,000.00.

The discovery of these outstanding final titles was a complete surprise to the Defendant inasmuch as representatives from First American Title Insurance Company and/or Colonial Title Company, regularly visited the Defendant's law office for the purpose of picking up the completed final title opinions and upon such visits, always left with a large number of same which was reflective of the volume of real estate closings that were being conducted.

Significantly, at no time was the Defendant ever personally advised by any representative of First American Title Insurance Company and/or Colonial Title Company, that there were outstanding final title opinions of such quantity. In hindsight, had the Defendant been so advised the discrepancy and/or the scope of the outstanding final titles, the fraud and misappropriation of Ms. Driscoll would have been discovered earlier.

Upon information and belief, it is believed that Cynthia Driscoll deliberately withheld the submission of these final titles to help conceal and obfuscate her misappropriation by creating additional float in the account(s) in question.

It was not until the Defendant requested a listing of all outstanding title orders from First American Title Insurance Company and Colonial Title Company on June 18, 2008, that he learned there were 245 outstanding final title insurance premiums and the Defendant immediately turned his attention to rectifying this omission to protect and/or minimize the impact of same on his clients. Although the majority of these disbursements were able to be

completed, all efforts towards resolving this issue were halted by the entry of a Consent Order of Preliminary Injunction, entered July 16, 2008, after which the Defendant had no further access to the trust account(s) at issue.

Finally, this issue was the subject of a third-party proceeding brought by the Defendant as against First American Title Insurance Company and Colonial Title Company in Wake County Superior Court and assigned Case No. 09 CVD 2865.

With respect to the individual closings referenced in paragraph "24", kindly be advised as follows:

(a) The title insurance premium in the sum of \$205.00 was paid on behalf of T.A. on June 26, 2008.

(b) The title insurance premium in the sum of \$427.60 was paid on behalf of G.B. on June 26, 2008.

(c) The title insurance premium in the sum of \$152.50 was paid on behalf of G.D. on June 26, 2008.

(d) The title insurance premium pertaining to R.G. was delineated in Defendant's letter of April 12, 2010 to the North Carolina State Bar requesting permission to pay same from funds being held in Wachovia Trust Account No. 2.

(e) The title insurance premium in the sum of \$202.50 was paid on behalf of R.G. on June 26, 2008.

(f) The title insurance premium in the sum of \$235.63 was paid on behalf of J.H. on June 26, 2008.

(g) The title insurance premium in the sum of \$90.00 was paid on behalf of A.J. on June 26, 2008.

(h) The title insurance premium in the sum of \$172.80 was paid on behalf of P.L. on June 26, 2008.

(i) The title insurance premium in the sum of \$259.60 was paid on behalf of S.M. on June 26, 2008.

(j) Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 24(j).

(k) The title insurance premium in the sum of \$429.60 was paid on behalf of A.M. on June 26, 2008.

(l) The title insurance premium in the sum of \$245.00 was paid on behalf of D.N. on June 26, 2008.

(m) The title insurance premium in the sum of \$330.00 was paid on behalf of C.P. on June 26, 2008.

(n) The title insurance premium in the sum of \$177.50 was paid on behalf of J.S. on June 26, 2008.

(o) The title insurance premium in the sum of \$706.00 was paid on behalf of C.S. on June 26, 2008.

(p) The title insurance premium in the sum of \$365.20 was paid on behalf of G.T. on June 26, 2008.

(q) The title insurance premium in the sum of \$212.50 was paid on behalf of W&C on June 26, 2008.

(r) The title insurance premium in the sum of \$286.80 was paid on behalf of F.Y. on June 26, 2008.

25. The allegations of paragraph "25" of the Complaint are denied.

26. The allegations of paragraph "26" of the Complaint are denied.

Specifically, the Defendant refers to his letter dated April 12, 2010 in which he specifically advised The North Carolina State Bar that he was holding funds which belong to certain clients and was seeking permission to disburse same. As noted previously, the funds necessary to complete any outstanding disbursements and/or return client funds are on deposit in Defendant's trust account(s). However, pursuant to the terms of the Consent Order of Preliminary Injunction, entered July 16, 2008, the Defendant is enjoined from disbursing or returning those funds at this time.

27. It is admitted that to the best of the Defendant's knowledge, only the Defendant wired funds from the firm's trust accounts. However, towards the end of her tenure, Cynthia Driscoll did in fact have access to both the firm's trust accounts as well as wiring authority. Except as specifically admitted, the remaining allegations of paragraph "27" of the Complaint are denied.

28. The allegations of paragraph "28" of the Complaint are denied inasmuch as, to the best of my recollection, Ms. Driscoll was (1) either entitled to compensation either equal to or in excess of the amount(s) so wired; or (2) tendered a check to be deposited into the firm's account(s) to cover all or part of the amount being wired to expedite her payment to U.S. Bank. However, subsequent to Ms. Driscoll's termination and upon further investigation, the Defendant learned that notwithstanding those wires, Ms. Driscoll additionally withdrew additional funds to which she was not entitled without the knowledge or consent of the Defendant and as such, it is recognized that such wires resulted in Ms. Driscoll receiving funds for which she was not entitled.

29. Defendant denies knowledge or information sufficient to form a belief at this time as to the allegations of paragraph "29" of the Complaint.

30. For the reasons delineated in response to the allegations of paragraph "28," above, the allegations of paragraph "30" of the Complaint are admitted. It is specifically denied that the Defendant knew at the time of the wiring that Ms. Driscoll was not entitled to an amount equal to any funds wired.

31. The allegations of paragraph "31" of the Complaint are admitted.

32. The allegations of paragraph "32" of the Complaint are admitted.

33. Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph "33" of the Complaint.

34. The allegations of paragraph "34" of the Complaint are admitted.

35. The allegations of paragraph "35" of the Complaint are admitted.

36. Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph "36" of the Complaint

37. Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph "37" of the Complaint

38. The allegations of paragraph "38" of the Complaint are admitted.

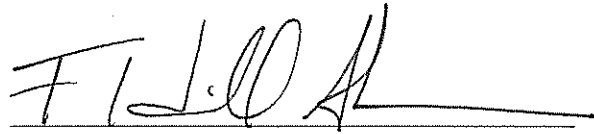
39. The allegations of paragraph "39" of the Complaint are denied. As a result of Ms., Driscoll's embezzlement, the Defendant was the subject of a legal proceeding commenced by the attorney for First American Title Insurance and styled *R.P. and A.P. v. Citi Mortgage, Inc.*, which action was filed in Wake County Superior Court. As a result of that filing, Citi Mortgage, Inc. commenced a third party proceeding against the undersigned Defendant who in turn brought First American Title Insurance Company and Colonial Title

Company into the action for the reasons discussed in response to paragraph "24" of the Complaint. Consistent with his obligation as the closing attorney, those matters were settled, the outstanding loan held by Citi Mortgage in conjunction with the R.P. closing was satisfied, and the Defendant entered into a corresponding *Confession of Judgment*.

40. The allegations of paragraph "40" of the Complaint are denied.

41. Any remaining allegations of the Complaint which have not been answered are hereby denied.

Respectfully submitted, this the 19<sup>th</sup> day of December, 2011.

A handwritten signature in black ink, appearing to read "F. Hill Allen", written over a horizontal line.

F. Hill Allen  
NC State Bar No. 18884  
Tharrington Smith, L.L.P.  
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**CERTIFICATE OF SERVICE**

I certify that the foregoing ANSWER was this 19<sup>th</sup> day of December, 2011, delivered by hand to counsel of record, as follows:

Leonor B. Hodge, Deputy Counsel  
Margaret C. Cloutier, Deputy Counsel  
The North Carolina State Bar  
208 Fayetteville Street  
Raleigh, NC 27601

A handwritten signature in black ink, appearing to read 'F. Hill Allen', written over a horizontal line.

F. Hill Allen  
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